Besides *Alpers* v. *Hunt*, the court cites and relies upon *Munday* v. *Whissenhunt*, 90 N. C. 458; *Burt* v. *Place*, 6 Cowen 431; *Lyon* v. *Hussey*, 82 Hun, 15, 31 N. Y. Supp. 281. A case sustaining the doctrine of the principal case, and more directly in point, is *Hirshbach* v. *Ketchum*, 5 App. Div. 324, 39 N. Y. Supp. 291. Apropos of these New York authorities, the very recent case of *Irwin* v. *Curie* (1902), 171 N. Y. 409, 58 L. R. A. 830, 64 N. E. 161, is interesting. A recovery was there permitted on a contract similar to the one in question in the principal case, on the ground that the parties were not *in pari delicto*. The New York statute positively prohibited such contracts, but the court found that this statute operated principally upon the attorney. It was further found, as a matter of law, that where the contract is merely *malum prohibitum* and not *malum in se*, the courts will interfere when the guilt rests chiefly upon one, although both have participated in the illegal act, citing *Tracy* v. *Talmage*, 14 N. Y. 162, 67 Am. Dec. 132; *Jaques* v. *Golightly*, 2 W. Bl. 1073. The weight of authority is undoubtedly with the principal case in holding that there can be no recovery in this class of cases. *Meguire* v. *Carwine*, 101 U. S. 108, 25 L. ed. 899; *Casserleigh* v. *Wood* (1902), — C. C. A. —, 119 Fed. 308.

COURTS—CONTEMPT—PUBLICATION OF EVIDENCE IN NEWSPAPERS.—Relator, who was publisher of a paper, published from day to day the evidence in a case on trial in the district court. The statements published were a true account of the testimony and in no way reflected on the judge. The trial judge committed relator for contempt of court in so publishing the testimony. On habeas corpus, *Held*, that the court had no power to prohibit the publication of the testimony of the witnesses in the case. *Ex parte Foster* (1903), — Tex. —, 71 S. W. Rep. 593.

The power of the courts to suppress the publication of articles concerning the trial of a case, the officers of the court and the proceedings therein, hinges upon the power to punish such as for contempt. By the weight of authority, the power to punish for contempt is inherent in all courts. *Fishback* v. *State*, 131 Ind. 304; *In re Wooley*, 11 Bush 97; *Ex parte Hollis*, 59 Cal. 498. Contra: *Story* v. *People*, 79 Ill. 45; *Ex parte Robinson*, 19 Wall. 510. Whether or not the publication of the proceedings of a trial can be prevented, depends upon the character and effect of the published article and also whether the trial is pending at the time of publication. In *State* v. *Morrill*, 16 Ark. 384, the court held that a newspaper publication, reflecting upon a decision made by the court and imputing to the court, officially, bribery in making the decision, was contempt. The publication in a newspaper of a true report of the testimony of the witnesses in a divorce case cannot be prevented by the court, *In re Stockbridge*, 99 Cal. 526. *In Story* v. *People*, 79 Ill. 45, the court held that the publication of articles concerning the integrity and moral character of grand jurors could not be suppressed. A publication in a newspaper in the city where the court is sitting with reference to a case then pending, charging the judges with political intrigues, is a contempt of court and can be prevented. *State* v. *Frew*, 24 W. Va. 416. In *In re Sturoc*, 48 N. H. 428, the court prevented the publication of an article in a newspaper, printed and circulated in the place where the court is sitting, reflecting in severe terms on the character of a prosecution then pending. A newspaper article, published during the session of a court, pending the trial before that court of a prisoner indicted for murder, charging the judge presiding over the court with being an abettor of the murderer, can not be prevented by the court, *Ex parte Smedes*, 4 Smedes & M. 751. Where the publications are true and fair in spirit, and after the decision has been made, it seems there is no law to restrain or punish the freest expressions that any person may entertain, of what is done in

or by the courts, *In re Sturoc*, 48 N. H. 432; *Ex parte Foster*, *supra*. However the courts may regulate the admission of persons, and the character of the proceedings within their own bar; the court may therefore refuse admission to newspaper reporters while a trial is pending. *U. S.* v. *Holmes*, 1 Wall. Jr. 1; *State* v. *Galloway*, 5 Cold. 326, 98 Am. Dec. 404.

CRIMINAL LAW—BURGLARY—SUFFICIENT BREAKING.—A statute made either breaking or entering the house of another with intent to commit a felony therein, burglary. Defendant, as it was alleged, broke two slats on the outside of a window and about six inches from it, and then removed the tacks and the putty which held a pane of glass in the window sash, but had not removed the glass or made an opening before he was driven away. *Held*, that it did not constitute a sufficient breaking for burglary. *Winter* v. *State*, (1903), — Ark. —, 71 S. E. Rep. 944.

A breaking necessary to constitute burglary must be some physical act of force however slight, by which the obstruction to entrance is removed. *Metz* v. *State*, 46 Neb. 547, 65 N. W. 190. Breaking open the shutters of a window, the sash and glass not being broken, does not constitute burglary. *State* v. *McCall*, 4 Ala. 643, 39 Am. Dec. 314. The removal of a window screen fastened with nails is a breaking where the window is open. *Sims* v. *State*, 136 Ind. 358, 36 N. E. 278. One who abstracts corn from a crib by thrusting his arms through an opening between the chinks is not guilty of burglary. *Miller* v. *State*, 77 Ala. 41. But one who bores a hole through the floor of a corn crib from the outside to let shelled corn run through it, is guilty. *Walker* v. *State*, 63 Ala. 49, 35 Am. Rep. 1. Where a building rests on the ground and is without a floor an entrance effected by digging under the wall is a sufficient breaking. *Pressley* v. *State*, 111 Ala. 34, 20 So. 647. Where the only covering to an open space in the dwelling house was a cloak hung upon two nails at the top and loose at the bottom and it was removed from one of the nails the court refused to pass upon the sufficiency of breaking as the judgment was reversed upon a question of evidence. *Hunter* v. *Commonwealth*, 7 Grat. 641, 56 Am. Dec. 121.

CRIMINAL LAW—EMBEZZLEMENT—AGENCY TO BUY OR SALE.—One Hardwick telegraphed to the defendant: "Buy me one thousand bbls July pork. Will have Exchange National Bank wire you the money." The defendant answered the telegram on the same day by letter as follows: "We have your telegram to buy one thousand bbls. Chicago July pork and on receipt of telegram from bank we executed your order for same as per enclosed contract . . . . ." The contract mentioned as enclosed is as follows: "You have this day bought from us at regular commission, less than the price named in the Memo., one thousand (1000) barrels Chicago pork at $16.05 per bbl., for delivery in July. Margin deposited with us, $1,000. Notice . . . We hereby agree to receive all property sold through us, and to deliver all property bought from us or through us at maturity of contract, and we will not accept business under any other condition, and the trades above recorded are made with this understanding . . . . . ." The defendant sold the pork at an advance in pursuance of Hardwick's order, who then demanded the money, and the defendant absconded, but was arrested and tried for embezzlement. *Held*, that he was not guilty. *State* v. *Brown* (1903), —Mo. —, 71 S. W. Rep. 1031.

The court bases its holding upon the terms of the contract the defendant sent to Hardwick, saying: "As to the acceptance of the contract and consenting to it on the part of Hardwick, the disclosure in this record settles that beyond all dispute. Hardwick admits the receipt of the contract. It was